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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re C.M., a Person Coming Under the Juvenile Court Law.	B214697 (Los Angeles County Super. Ct. No. CK75324)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.T. et al., Defendants and Respondents; C.M., Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Emily Stevens, Judge. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Appellant.

No appearance by Plaintiff and Respondent.

No appearance by Defendants and Respondents.

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INTRODUCTION

Minor C.M. appeals from a juvenile court order dismissing a dependency petition. Appellant contends that the order must be reversed because substantial evidence supported sustaining the petition. The proper standard of review is abuse of discretion, not substantial evidence. Applying the abuse of discretion standard, we have reviewed the entire record to determine whether appellant has met his burden to show that the juvenile court's order was arbitrary, capricious, or patently absurd. We conclude that appellant has not met his burden and we affirm the order.[1]

BACKGROUND

1. *C.M.'s Detention by the Department of Children and Family Services*

C.M. was detained by the Department of Children and Family Services (DCFS or the Department) when he was 22 months old. He was born 24 weeks prematurely and weighed one pound three ounces. C.M. required extraordinary medical care and remained hospitalized for five months. He suffered from intraventricular hemorrhage, chronic lung disease, developmental delay, hypotonia, and microcephaly secondary to cerebellar hypoplasia.[2]

C.M. became a client of the Regional Center, which provided physical and occupational therapy and child development services.[3] Mother stopped taking C.M. to the program, "Every Child Achieves," which was provided under a contract with the

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[1] County Counsel notified this court that it did not intend to file a respondent's brief on behalf of the Department of Children and Family Services. Mother and father have not appeared in this appeal.

[2] C.M.'s twin was born but did not survive. Earlier in her pregnancy, mother miscarried a triplet.

[3] Regional Centers secure services for developmentally disabled persons. (Welf. & Inst. Code, § 4648, subd. (a)(1); see generally, *Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482.)

Regional Center, because she claimed that an employee of the program made sexual advances to her and exposed himself to her. Approximately three weeks later, she transferred to McCoy Pediatrics for C.M.'s physical therapy.

On November 10, 2008, mother took C.M. to his pediatrician Dr. Sakhai due to periodic vomiting over the previous 40 days. Mother believed the vomiting was related to his constipation. C.M. was given oxygen via nasal cannula. Dr. Sakhai reported to the Department that C.M. had difficulty swallowing, had not gained weight, and had a fecal mass in his abdomen. He claimed that mother denied that C.M. was constipated and that she did not agree to see a dietician or a GI specialist for possible insertion of a feeding tube. Dr. Sakhai did not believe that mother could care for C.M. effectively.

When C.M. vomited again, mother believed that he had inhaled some of the vomit and she feared pneumonia, so she took him to the emergency room of Cedars-Sinai Medical Center. Several staff members at the hospital reported to the Department that mother was resistant to their care and that her resistance endangered C.M.'s life. The Department therefore filed a dependency petition on November 17, 2008, and C.M. was detained at Cedars-Sinai, where he remained hospitalized.

Mother and father were separated at the time of detention. Mother had the assistance of Kristine McNally, a licensed vocational nurse (LVN) provided by the Regional Center, who spent 12 hours per day, six days per week with mother and C.M. The Children's Social Worker (CSW) reported that McNally had told her that mother was verbally aggressive and made things up. McNally thought mother was depressed.[4] Mother told the CSW that she had worked in surgery for years and had nursing experience.

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[4] After the detention hearing, McNally submitted a declaration denying that the CSW asked about mother's mental state and representing that mother had always been in a good emotional state. McNally also stated that mother was competent in her care for C.M. She fed him appropriately and was very devoted.

As later amended, the petition alleged that a prior dependency petition had been sustained as to father in 1999, after he was found to have physically abused his son D.M. and sexually abused his daughter F.M. when she was four years old.[5] It was further alleged that father had failed to participate regularly in counseling and parenting classes ordered in that case, and that this fact and the abuse placed C.M. at risk of physical and emotional harm. The petition alleged that mother refused to allow C.M. "to receive recommended medical treatment while hospitalized, including but not limited to drawing blood and taking vital signs," which endangered his physical and emotional health, safety, and well being.

At the detention hearing, the court stated that it had reviewed the additional medical records that mother's counsel had provided the court that day. Counsel represented that the reports showed that C.M. did not need a feeding tube and was gaining weight. The Department recommended that the court appoint an evaluator pursuant to Evidence Code section 730 to review all the medical reports of the various doctors treating C.M. The court stated that it would also be useful to have the expert interview the parents so that the court might determine whether mother was an impediment to treatment. The court appointed Carol Berkowitz, M.D., with instructions to interview mother and father for the child's history, review all medical records, and recommend a treatment plan and medical services.

The court allowed mother to continue to have the authority to make decisions regarding C.M.'s care and to stay with C.M. at the hospital.[6] The court gave the Department discretion to release the child to mother when discharged. The court scheduled an adjudication hearing for December 11, 2008.

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[5] D.M. and F.M. were C.M.'s half-siblings, born to a different mother.

[6] The court explained to mother that although a prima facie showing for detention had been made, she was not necessarily wrong to advocate for C.M. or to be vigilant when medications were administered.

2. Jurisdictional Hearing

On December 11, 2008, the court ordered the Department to hold a Team Decision Meeting (TDM) to devise a safety plan that would allow C.M. to return to mother's care with the help of LVN McNally or another licensed professional. The jurisdictional hearing was continued and finally took place on February 5 and 6, 2009.

In the meantime, the Department obtained a psychological evaluation of mother. Dr. Lynne Meyer diagnosed mother with posttraumatic stress disorder that was due to C.M.'s premature birth and medical issues, the loss of two triplets, and her troubled relationship with father. Dr. Meyer explained that some medical workers, failing to understand the severity of the stress, might misconstrue mother's distress as uncooperative or disruptive behavior. She concluded that mother was a good mother, committed to C.M.'s long-term care, and would be cooperative so long as she understood the necessity for procedures she perceived as painful to C.M.

The Department reported that the Regional Center had assigned a new home-care nurse. The Department's dependency investigator, the supervising CSW, and assistant regional administrator held a TDM and agreed that returning C.M. to mother's custody with Regional Center services and a home nurse was appropriate and in C.M.'s best interest. C.M. was discharged from the hospital and released to mother.

For the jurisdictional hearing, the court considered Dr. Berkowitz's report, the CSW's informational report prepared for the hearing, excerpts from the dependency file concerning father's daughter F.M., and father's declaration with exhibits.

In her informational report, the CSW reported to the court that another TDM had been held, attended by the CSW, Regional Center employees and C.M.'s new nurse. Dr. Thomas Keens attended by telephone. Dr. Keens reported that he had been treating C.M. since June 2007 and had been in regular contact with mother. He stated that mother was attentive and did not engage in conduct that would sabotage C.M.'s safety. He thought that mother did "more than what other families do." Dr. Keens reported that C.M. had gained weight since returning to mother's custody and no longer required oxygen 24

hours per day. Everyone present at the TDM agreed that mother and C.M. did not need DCFS intervention.

Dr. Berkowitz reported to the court that she had reviewed all the Cedars-Sinai medical records as well as the records of C.M.'s hospitalization at Children's Hospital of Los Angeles.

In addition, she had reviewed the records of Dr. Sakhai, the Pediatric Pulmonology Clinic (Dr. Keens), the Regional Center, C.M.'s physical and occupational therapy provider, the nutritionist's assessment, and letters from C.M.'s ophthalmologist and the Children's Eye Group. Dr. Berkowitz also reviewed LVN McNally's declaration, a letter from mother, and reports and letters regarding father's therapy and programs attended between 1999 and 2001.

In her report, Dr. Berkowitz summarized C.M.'s care since birth and her interviews with mother and father. She reported that during her interview, mother clearly articulated C.M.'s medical history, current medical conditions, and his weight and length. Mother told Dr. Berkowitz that C.M. had a feeding tube at that time and was tolerating his feedings. She could understand and articulate his treatments and the need for them. Mother described C.M.'s ability to get up on all fours, roll in both directions, and babble. Mother acknowledged areas of conflict with some of the health care providers and attributed some of the conflict to her extensive medical experience.

Dr. Berkowitz reported that father had expressed anger toward C.M.'s doctors and mother. However, he described mother as totally focused on caring for C.M. and thought his anger toward her would resolve if C.M. did well. He said he planned to be involved with C.M., but Dr. Berkowitz observed that he did not express an interest in being primarily responsible for C.M.'s medical care or management.

Dr. Berkowitz noted that C.M. continued to have chronic lung disease and would continue to need a high level of medical care for his multiple medical issues. She noted that his oxygen requirement was minimal at that time and he was under the care of an excellent pediatric pulmonologist, Dr. Keens. She opined that C.M. was receiving

appropriate occupational and physical therapy and other treatment, and she noted that his growth curve showed a steady growth pattern. She did not examine C.M., but stated that his photograph depicts a "thriving, well-nourished and responsive youngster."

Dr. Berkowitz concluded that C.M. was currently receiving the medical care and services that he needed, and that mother was very knowledgeable about his specific requirements and seemed committed to attending to them.

Also before the court was the dependency file concerning father's daughter F.M. with certain portions tabbed for review. Other than some excerpts, the file was not admitted as an exhibit and has not been reproduced in the appellate record in this case. The excerpts include reports that father had attended a domestic violence program and group counseling and that his participation in the programs were satisfactory, with no further participation recommended. Letters from his two individual therapists were included, showing that he participated in therapy for at least two years. In his declaration, father stated that he had been awarded joint custody of D.M. in 2004 and that while he was in middle school in 2003, D.M. lived with father.[7]

After considering the evidence summarized above, hearing argument of counsel, and allowing father to speak for 15 minutes, the court found that father manifested no anger management problems. The court found that mother and father cooperated with each other to raise C.M. and deal with his medical issues. The court noted that father regained custody of D.M. for a time without new allegations of abuse, and there was no evidence of current behavior that posed a risk to C.M. The court concluded that with regard to both D.M. and F.M., the 1999 allegations were either not true or father had

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[7] Attached to the declaration was an excerpt from a 2008 report from F.M.'s social worker stating that F.M. had recanted her 1999 statements, explaining that her mother had put her up to it by threatening her. Also before the court were excerpts from the family law case involving D.M. and F.M., including a report from the children's attorney, who stated that father frequently pressured F.M. to recant. F.M. had been diagnosed with bipolar disorder, attention-deficit hyperactivity disorder, and posttraumatic stress disorder.

resolved them in therapy. The court dismissed the petition. C.M.'s counsel filed a timely notice of appeal from the order of dismissal.

DISCUSSION

Appellant contends that the juvenile court erred in dismissing the dependency petition, because the evidence would have supported an order sustaining it. After summarizing all the evidence that would have supported an order sustaining the petition, appellant contends that the court's order was not supported by substantial evidence. Further, appellant argues, the court's reasoning was "illogical."

The dismissal of a dependency petition is reviewed for abuse of discretion. (See *In re La Shonda B.* (1979) 95 Cal.App.3d 593, 601-602.) "'"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.]'" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Appellant has cited no authority supporting an asserted "illogical" test. In fact, we will not interfere with an exercise of discretion unless the juvenile court '"'has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].'" [Citations.]" (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) The question of substantial evidence comes into play only when the reviewing court '"'find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that [she] did.' . . .'" [Citations.]" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

We presume the court's order is correct; appellant bears the burden to show otherwise. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1066.) Moreover, it is not enough to show error; appellant must also show that the error resulted in a miscarriage of justice. (*Id.* at pp. 1066-1067.) Appellant has pointed to evidence that would support a different opinion. Such an approach is insufficient to meet these burdens. (See *In re*

Stephanie M., *supra*, 7 Cal.4th at p. 319; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

We have reviewed the evidence in the light most favorable to the prevailing parties, resolving any conflicts in the evidence in support of the order. (See *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Taking the opposite approach, appellant points to a letter to C.M.'s attorney from a nurse who heard from other, unnamed nurses that mother had refused to follow doctors' orders.[8] The letter also states that the nurses reported that mother told them that father had recently raped her. Appellant argues that this letter supported LVN McNally's opinion that mother was mentally ill.[9] Appellant argues in the alternative that if mother's alleged statements were to be believed, father should not have unmonitored visits. Appellant also points to other evidence of mother's failure to follow doctors' recommendations -- evidence that supported detaining C.M. -- as well as a 2007 report from Dr. Keens stating that mother wished to take C.M. to Mexico for stem cell therapy.

With regard to father, appellant complains that the court failed to "focus" on father's abuse of his other children 10 years ago. Appellant contends in effect that the court should have given less weight to father's satisfactory performance in court-ordered programs 10 years ago and his consistent visitation with D.M. and F.M., and more weight to the allegation that he had not made sufficient progress in those programs.

"We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]" (*In re*

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[8] The letter was dated January 21, 2009, but it includes no dates during which the alleged lack of cooperation with doctors occurred.

[9] LVN McNally later submitted a declaration denying that she ever expressed the opinion that mother was mentally ill. Further, McNally stated that she thought mother was always "in a very good emotional and mental state," was a "very competent mother, and overly devoted to helping [C.M.] with his disability. . . ."

Casey D. (1999) 70 Cal.App.4th 38, 52-53.) We thus decline appellant's invitation to do so. Further, we note that it was precisely because of the conflicts in the evidence that the juvenile court appointed an expert, Dr. Berkowitz, to review all medical records, interview mother and father, and report back to the court. We accept the juvenile court's rejection of the reports cited by appellant in favor of Dr. Berkowitz's report. We defer to the court's assessment of father's demeanor and its inferences drawn from the 1999 dependency file. We especially find nothing arbitrary or capricious (let alone illogical) in the court's rejection of undated anonymous hearsay accusations.

Having reviewed the entire record according to the appropriate standard, we find nothing "arbitrary, capricious, or patently absurd" about the juvenile court's determination. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.) We cannot conclude that no reasonable judge could have made the same order, and thus we find no abuse of discretion. (See *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

DISPOSITION

The order dismissing the petition is affirmed.

MOHR, J.*

We concur:

RUBIN, Acting P. J. BIGELOW, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.